

CALIFORNIA COASTAL COMMISSION

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Filed: 12/4/2001
Prior Hearing: 1/8/2002
Staff: CP-LB
Staff Report: 3/3/2005
Hearing Date: March 16, 2005
Commission Action:

**STAFF REPORT: DE NOVO & REGULAR CALENDAR**

APPLICATION NUMBER: 5-01-257 **APPEAL NUMBER:** A-5-VEN-01-279

APPLICANT: City of Los Angeles Department of Public Works

AGENT: Raul Rojas, Deputy City Engineer

PROJECT LOCATION: West bank of Ballona Lagoon between Via Marina and Grand Canal, (on City-owned property, public rights-of-way and publicly-owned easements), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Implementation of Phase III of the Ballona Lagoon Enhancement Plan, which includes: 1) removal of non-native vegetation and encroachments (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping); 2) revegetation with native dune plants, 3) realigning and improving the west bank public access trail between Topsail Street and Canal Court, 4) construction of a split rail fence along the public access trail, 5) construction of public overlooks with benches at four street ends (Union Jack, Voyage, Westwind and Yawl Streets), and 6) construction of a public education/information area with benches near Jib Street at the northern end of the lagoon.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission **APPROVE** a de novo permit (A-5-VEN-01-279) and a coastal development permit (5-01-257) for the proposed development with special conditions to minimize adverse impacts to sensitive habitat areas and endangered species, and to protect and enhance public access and recreational opportunities on public lands. The recommended special conditions require the permittee to realign the existing public access trail farther away from the lagoon's intertidal areas and to implement specific construction methods to ensure that the proposed project is the least environmentally damaging alternative for enhancement of the public access and habitat resources of Ballona Lagoon. The recommended Special Conditions begin on Page Five. **See Page Three for the motions necessary to carry out the staff recommendation.**

The Commission has previously reviewed and approved the proposed development. On January 8, 2002, subsequent to a public hearing in Los Angeles, the Commission conditionally approved Coastal Development Permit 5-01-257 and De Novo Permit A-5-VEN-01-279 (City of Los Angeles Dept. of Public Works) for the proposed Ballona Lagoon West Bank Restoration Project. Litigation followed, and the permits were not issued. Pursuant to the Commission's and City's 2004 settlement in the case of Nancy N. Kennerly v. California Coastal Commission and City of Los Angeles, the Commission's January 8, 2002 action approving the permits was vacated, and the Commission agreed to hold a new public hearing for the permit applications. Consequently, the applications are now before the Commission again for approval of the previously approved restoration project. Approval of these coastal development permit applications would effectively reinstate the conditional authorization of the project originally granted by the Commission on January 8, 2002, subject to any modification or change the Commission may require or authorize pursuant to this action.

The current staff recommendation is different from the Commission's 2002 approval in two ways: 1) in order to increase the distance between the public access trail and the waters of the lagoon, staff recommends that the trail be realigned onto the inland portion of the City-owned lots (segment between

Topsail Street to Jib Street) and the Esplanade West right-of-way (segment between Jib Street to Canal Court), but with the exception of a five-foot privacy buffer that would be provided on the ten-foot wide Esplanade West right-of-way between the new five-foot wide trail and the private residential lots located at the northern end of the lagoon (e.g. Ms. Kennerly's property), and 2) new public parking would not be required on the four street ends at the southern end of the lagoon, as the City Department of Transportation has determined that the provision of safe vehicular access to new parking on these rights-of-way is infeasible. The staff recommendation includes, as did the permit approvals in 2002, approval for the permittee's removal of unpermitted development (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping) from the **protective lagoon buffer strip**, and revegetation with native vegetation.

As used in this staff report, the "protective lagoon buffer strip" along the west bank of Ballona Lagoon includes: the City's Esplanade West right-of-way, Lots G through P, the unsubmerged portions of Lot C and Lot R, and the protected habitat areas and easements on private property that have been required and/or identified by previously approved coastal development permits. [See Exhibit #2, pages 1-4.]

Staff Note: The proposed project is located on the west bank of Ballona Lagoon, within 300 feet of the lagoon's mean high tide line. Therefore, it is within the coastal zone area of the City of Los Angeles that has been designated in the City's permit program as the "Dual Permit Jurisdiction" area. Pursuant to Section 30601 of the Coastal Act and Section 13307 of the California Code of Regulations, any development located in the Dual Permit Jurisdiction that receives a local coastal development permit from the City must also obtain a permit from the Coastal Commission. The City-approved local coastal development permit for the proposed project was appealed to the Commission on July 17, 2001 (Appeal No. A-5-VEN-01-279). On September 11, 2001, the Commission found that a Substantial Issue existed with the City's approval of the proposed project, thus taking jurisdiction over the local coastal development permit process.

Subsequent to the Commission finding of substantial issue in 2001, the City supplemented the proposed restoration project (which originally entailed restoration of the City-owned lots and portions of the Esplanade West right-of-way) so that the proposed project also includes the removal of all existing unpermitted development and restoration within all habitat easements that exist over portions of some of the privately-owned west bank lots (Exhibit #2, p.2). These easements on private property were offered by individual permittees as a condition of the Commission-approved coastal development permits issued for residential development along the west bank in order to enlarge the protective lagoon buffer strip that exists between the lagoon and the residential development. The City of Los Angeles, California Coastal Conservancy and the Ballona Lagoon Marine Preserve (BLMP) have accepted the habitat and access easements that exist across twenty of the west bank lots south of Topsail Street. The Department of Public Works is in the process of transferring ownership of the easements now held by the Coastal Conservancy and BLMP to the City. Therefore, the proposed project would result in the restoration of the entire west bank protective lagoon buffer strip, including all of the City-owned properties on the west bank (including the Esplanade West right-of-way and several individual lots) and the habitat easements on the private lots.

In order to minimize duplication, Commission staff has combined the de novo appeal permit (A-5-VEN-01-279) and coastal development permit application (5-01-257) into one staff report and one Commission hearing. However, the Commission's approval, modification or disapproval of the proposed project will require two separate Commission actions: one action for the de novo appeal permit and one action for the coastal development permit application. Staff is recommending that the Commission approve both permits with the following identical special conditions and findings. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Los Angeles certified Land Use Plan (LUP) for Venice is advisory in nature and may provide guidance.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/14/2001.
2. City of Los Angeles Local Coastal Development Permit No. 00-04.
3. Coastal Development Permit 5-95-152 & amendments (City of LA/BLMP/Conservancy).
4. Coastal Development Permit A-266-77 (ILA) & amendment.
5. Coastal Development Permit P-78-2737 (Sevilla & Dubin).
6. Coastal Development Permit P-78-3123/A-281-77 (Cashin).
7. Coastal Development Permit 5-85-371 (Wyatt).
8. Coastal Development Permits 5-86-819, 5-87-500 & 5-88-1053 (Rome).
9. Coastal Development Permit 5-89-593 (MDR Properties).
10. Coastal Development Permits 5-97-220, 5-97-363 & 5-98-328 (Paragon).
11. Coastal Development Permit 5-97-015 (Ganezer).
12. Coastal Development Permit 5-00-001 (Garcia).
13. Coastal Development Permit 5-00-161 (City of LA).
14. Coastal Development Permit Application 5-01-289/A5-VEN-01-280 (City of LA Grand Canal).
15. Coastal Development Permit Applications 5-01-306 & 5-01-307 (VDH Development).
16. Coastal Development Permit 5-02-133 (Fitzgerald).
17. Categorical Exemption (CEQA) No. CE 3093, 5/25/00.
18. Proposal for The Restoration/Revegetation of the Western Bank of the Ballona Lagoon, by Roderic B. Buck, December 2001.
19. Conceptual Plan for Completion of Phase II Improvements of the Ballona Lagoon Enhancement Plan for the West Bank of Ballona Lagoon, BLMP, March 1999.
20. Ballona Lagoon Enhancement Ten-year Monitoring Plan, July 1996.
21. Ballona Lagoon Enhancement Plan, BLMP & State Coastal Conservancy, August 1992.
22. Avifauna of the Venice Canals by Charles T. Collins, Ph.D., 1986.
23. Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, October 1981.
24. Ecological Evaluation of Ballona Lagoon, by Richard F. Ford, Ph D and Collier, Gerald, Ph D. May 7, 1976, Center for Marine Studies, San Diego State University.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolutions to **APPROVE** Coastal Development Permits 5-01-257 and A-5-VEN-01-279 with special conditions. Staff recommends two **YES** votes which would result in the adoption of the following resolutions and findings. Each motion passes only by affirmative vote of a majority of the Commissioners present.

MOTION I: *"I move that the Commission approve with special conditions Coastal Development Permit 5-01-257 pursuant to the staff recommendation."*

MOTION II: *"I move that the Commission approve with special conditions Coastal Development Permit A-5-VEN-01-279 pursuant to the staff recommendation."*

I. Resolution: Approval with Conditions of Permit 5-01-257

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as

conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Resolution: Approval with Conditions of Permit A-5-VEN-01-279

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

III. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

IV. Special Conditions

1. Lagoon Buffer Strip

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall accept the easements on the west bank of Ballona Lagoon that have been offered for dedication (for habitat restoration and public access purposes) as part of the west bank lagoon buffer strip on Blocks 1 through 5 of the Del Rey Beach Tract. The habitat and access easements that have already been accepted by other agencies shall be transferred to City ownership.

2. Revised Plans

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans to the Executive Director for review and approval. All plans associated with the project shall be updated to incorporate the following revisions to the project:

(i) **Revegetation Plan.** A revegetation plan for the entire project area, consistent with all requirements of Special Condition Three and developed in consultation with the Commission's biologist, the California Department of Fish and Game and biologist Robert van de Hoek, shall be prepared and submitted to the Executive Director for review and approval. All plant materials for the entire development shall be of southern California native plants appropriate to the natural habitat type (dune), and shall be consistent with all of the following requirements:

a) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized on the property. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

b) The revegetation plan shall include a map showing the type, size and location of all plant materials that will be on the developed site, a temporary irrigation system (if necessary), topography of the developed site, and all other landscape features, and a schedule for installation of plants. The revegetation plan to be submitted to the Executive Director shall be accompanied by an analysis prepared by a licensed Landscape Architect or a qualified Resource Specialist that documents that the revegetation plan includes the appropriate size and types of plants for the Ballona Lagoon habitat area and appropriate performance standards for the first five years of the restoration project.

c) Existing non-native trees shall be removed from the project area, except for individual trees that have been determined by the biologists to not have any adverse effect on the adjacent habitat area and surrounding environment.

(ii) **Removal of Encroachments.** All development (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and play sets) and non-native landscaping situated within the protective lagoon buffer strip shall be

removed by the permittee concurrently with the restoration project in order to enhance habitat area and public access opportunities. The protective lagoon buffer strip includes the City's Esplanade West right-of-way, Lots G through P, the unsubmerged portions of Lot C and Lot R, and the protected habitat areas and easements on private property that have been required and/or identified by previously approved coastal development permits. Removal of the encroachments shall be completed within 180 days of the issuance of the coastal development permit. The Executive Director may grant additional time for good cause.

- (iii) Trail Alignment. The proposed five-foot wide west bank public access trail shall extend southerly from the existing Grand Canal public accessway system on the northern end of Ballona Lagoon (at Canal Court) to Topsail Street, near the southern end of the lagoon. In order to maximize the width of the protected lagoon bank area, the trail shall be aligned along the inland portion of the project site (i.e. farthest from the waters of the lagoon), except as follows: a) the section of the decomposed granite trail proposed between Jib Street and Topsail Street may constructed as a meandering trail, but the trail shall not be located closer to the waters of the lagoon than a line measured ten feet from the existing eastern curb of Pacific Avenue; and, b) on the northern end of Ballona Lagoon, where the public trail must pass between the waters of the lagoon and existing private residences, a five-foot wide buffer may be provided on the inland portion of the Esplanade West right-of-way between the trail and any existing (at the time of this approval) habitable structures in order to provide a measure of privacy between trail users and the adjacent homes.
- (iv) Fencing. A contiguous fence or similar barrier, not exceeding four feet in height (above natural grade), shall be installed along the most inland extent of the west bank protective lagoon buffer strip (including all habitat easements), except where the public access is permitted. Where the public access is permitted (the public trail, overlooks and public education/information area) the fence shall be placed along the side of the trail/public area nearest the lagoon. The fence shall be constructed of materials that are spaced in a manner that renders the fence impassable by common domesticated animals (e.g. dogs and cats). Revised plans to be submitted to the Executive Director shall be accompanied by an analysis of the fence plan prepared by a qualified biologist which documents that the fencing will be impassable by domesticated animals and shall minimize the entry of such animals to environmentally sensitive habitat including adjacent wetlands. The fencing shall be installed concurrently with the restoration project. On the northern end of the project area, where the public trail passes between the west bank protective lagoon buffer strip and the private residential development, a privacy fence or wall greater than four feet *may* be constructed along the inland side of the trail.
- (v) Street Ends - Public Access Improvements. The street ends located south of Topsail Street and situated east of Pacific Avenue (Union Jack, Voyage, Westwind and Yawl Streets) shall be improved concurrently with the restoration project and maintained as follows:

- a) Union Jack Street – A public overlook, with a public bench and appropriate signage, will be provided at the eastern end of the street end (as shown on Exhibit #5, page 1 of the **staff report dated 3/3/2005**).
 - b) Voyage Street – A public overlook, with a public bench and appropriate signage, will be provided at the eastern end of the street end (as shown on Exhibit #5, page 1 of the **staff report dated 3/3/2005**).
 - c) Westwind Street – This entire street end shall be maintained as public landscaped open space with a public overlook provided at the eastern end of the street end (as shown on Exhibit #5, page 2 of the **staff report dated 3/3/2005**). A public walkway (with appropriate signage) shall be installed to provide public access from Pacific Avenue to the public overlook.
 - d) Yawl Street – This street end shall be maintained in its current unpaved condition with no changes to the existing public access opportunities (i.e., the informal public parking opportunities). A public overlook, with a public bench and appropriate signage, will be provided at the eastern end of the street end (as shown on Exhibit #5, page 1 of the **staff report dated 3/3/2005**).
- (vi) Pacific Avenue Crossing. In order to allow safe crossing of Pacific Avenue, a pedestrian crossing shall be installed at the intersection of Pacific Avenue and Topsail Street. Traffic at this crossing shall be controlled at this intersection by installing either a stop sign or traffic signal. The pedestrian crossing shall be installed concurrently with the restoration project.
- (vii) Pacific Avenue Street Drainage. Curbs shall be installed along the east side of Pacific Avenue at Jib Street and Topsail Street to prevent uncontrolled sheet flow from leaving the street. Appropriate drainage connections shall be installed to control runoff from Pacific Avenue using the existing drains approved by Coastal Development Permit 5-00-161. Street drain filters shall be installed in all drains that discharge directly into Ballona Lagoon. Each street drain filter shall be designed and maintained to filter the stormwater runoff from each runoff event up to and including the 85th percentile, 24-hour runoff event for volume based BMPs and/or the 85th percentile, one-hour event, with an appropriate safety factor, for flow-based BMPs. The filters shall be maintained and replaced as necessary to prevent the drains from clogging and flooding the street. The curbs and drainage improvements shall be installed within 180 days of the issuance of the coastal development permit. The Executive Director may grant additional time for good cause.
- (viii) Gully Repairs. Clean fill shall be used to repair the gullies on the lagoon bank that have eroded east of Pacific Avenue at Jib Street and Topsail Street. In order to ensure that all existing wetland vegetation is protected from filling activities, no fill shall be placed below the five-foot contour line.
- B. The permittee shall undertake development in accordance with the final plans approved by the Executive Director. To ensure compliance, the City shall include the requirements of this condition on all plans and contracts issued for the project. Any

proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Revegetation and Erosion Control

Prior to the removal of non-native vegetation, a qualified biologist shall survey the project site and identify with flags all areas of existing native vegetation. The permittee shall ensure that the areas of existing native vegetation, except for those areas where public access improvements are permitted, are protected from disturbance during the implementation of the approved project, and that adequate water is provided to keep the plants healthy. Native vegetation that is removed from the areas where public access improvements are permitted shall be transplanted elsewhere within the project area.

Under the supervision of a qualified biologist, the permittee shall remove all non-native plants from the canal banks using only hand-held tools while taking care to avoid disturbance of native plants. No herbicides may be employed. No grading is permitted. No heavy machinery may be used, except on existing paved roads. Smaller mechanized vehicles with rubber tires (e.g. Bobcats) may be used to transport heavy loads between paved roads and work areas. No dead plants shall be left on site (unless deemed necessary by a biologist to prevent erosion of the banks) and no persistent chemicals shall be employed. The permittee shall landscape the west bank of Ballona Lagoon in conformance with the following requirements:

- A. All revegetation and development shall conform to the plan approved by the Executive Director pursuant to Special Condition Two. All vegetation planted on the site will consist of native plants typically found in the dunes adjacent to the Ballona wetlands. As much as possible, the seeds and cuttings employed shall be from local sources adjacent to Ballona Lagoon, the Venice Canals, and the Ballona wetlands. Los Angeles and Orange County native plant nurseries and dunes may be used as alternative sources if the local sources cannot supply all of the necessary plant materials. Prior to the first planting cycle, the permittee shall provide the Executive Director with the quantities and sources of all plants used in the project.
- B. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- C. Erosion Control. Prior to removing the non-native plants and preparation of the soil, the applicant shall install silt curtains along the entire length of the water's edge to prevent siltation of the lagoon. Jute matting shall be placed on all slopes immediately following the removal of the existing plant cover. In addition, the applicant shall implement the following temporary erosion control measures during the restoration project: temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, and additional silt fencing as needed.

- D. Revegetation shall commence as soon as possible following removal of non-native plants and preparation of the soil. The existing native vegetation and all required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan. Revegetation activities may continue during the least tern nesting season.
- E. Planting will maintain views of the water from the public areas.
- F. Monitoring. The permittee shall actively monitor the site, remove non-natives and reinstall plants that have failed for at least five years following the initial planting. The permittee will monitor and inspect the site no less than once each thirty days during the first year that follows the initial planting. Thereafter, the permittee will monitor the site at least once every ninety days or on the City's regular landscape maintenance schedule, whichever is more frequent. Five years from the date of permit issuance, the permittee shall submit for the review and approval of the Executive Director, a revegetation monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the revegetation is in conformance with the revegetation plan approved pursuant to Special Condition Two. The monitoring report shall include photographic documentation of plant species and plant coverage. If the revegetation monitoring report indicates the revegetation is not in conformance with or has failed to meet the performance standards specified in the revegetation plan approved pursuant to this permit, the permittee shall submit a revised or supplemental revegetation plan for the review and approval of the Executive Director. The revised revegetation plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the supplemental revegetation plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.
- G. The City shall include the requirements of this condition on all plans and contracts issued for the project.

4. Construction Staging - Protection of Marine Resources

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a project staging and construction plan, subject to the review and approval of the Executive Director, that includes specific staging and construction measures sufficient to prevent the unpermitted deposition, spill or discharge of any liquid or solid into coastal waters (which include Ballona Lagoon and the Venice Canals). At a minimum, the plan shall include the following provisions:

- A. A site plan that identifies the specific locations of all construction staging activities and equipment and materials storage areas. Construction staging activities and equipment and materials storage areas shall not be located on any beach, wetland or

environmentally sensitive habitat area, except as specifically permitted by this coastal development permit.

- B. The storage or stockpiling of soil, silt, other organic or earthen materials, or any materials and chemicals related to the construction, shall not occur where such materials/chemicals could pass into coastal waters. Any spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.
- C. Construction equipment and vehicles shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction equipment shall be serviced immediately. Equipment and machinery shall be serviced, fueled, maintained and washed only in confined areas specifically designed to control runoff and prevent discharges into coastal waters. Thinners, oils or solvents shall not be discharged onto the ground or into sanitary or storm sewer systems.
- D. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than fifty feet away from all stormdrains, open ditches and surface waters.
- E. All floatable debris and trash generated by construction activities within the project area shall be disposed of at the end of each day, or as soon as possible.
- F. Measures to control erosion must be implemented at the end of each day's work.

The City shall include the requirements of this condition on all plans and contracts issued for the project. The permittee shall implement and carry out the project staging and construction plan during all construction, staging and cleaning activities consistent with the plan approved by the Executive Director.

5. Public Access

- A. The permittee shall complete all of the approved public access improvements (i.e., five-foot wide trail from Grand Canal to Topsail Street, connections to existing sidewalks, street end improvements) along the west bank of Ballona Lagoon consistent with the final plans approved pursuant to Special Condition Two and all other conditions of approval. Any encroachments into the Ballona Lagoon public trail system shall be removed as part of the project.
- B. The permittee shall post and maintain signs that identify the approved west bank trail/walkway as a public accessway.
- C. By acceptance of this permit, the permittee agrees that the approved trail/walkway along the entire west bank of Ballona Lagoon from Grand Canal to Topsail Street is a public accessway, and that this accessway shall be maintained for general public use 24 hours a day and shall not be closed. The permittee shall periodically inspect the walkway and remove any new encroachments.

- D. The permittee shall ensure that trash receptacles and free provisions (e.g. refuse bags) for the proper disposal of pet feces are provided along the public accessway, at a minimum of one location for each 300-foot section of the accessway. The permittee shall be responsible for ensuring that the trash receptacles are maintained and routinely emptied in order to prevent spillage of refuse.

6. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

7. California Least Tern

In order to minimize adverse impacts on least tern foraging in Ballona Lagoon during the least tern nesting season, no mechanized or other types of loud equipment shall be used within fifty feet of the water during the period commencing March 15 and ending September 1.

8. No Fill in Wetlands

No fill shall be placed in any wetland or below the five-foot contour line (+5.0' MHTL).

9. Expanded Project Area – Habitat Restoration on Portions of the Protective Lagoon Buffer Strip that are on Private Property Over Which the City Has No Property Interest

On any privately owned lot adjacent to the southern portion of the Esplanade West, this coastal development permit authorizes the City, subject to the permission of the property owner, to remove non-native plants and unpermitted development (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and play sets) situated within any area designated (pursuant to an approved coastal development permit) as a "habitat buffer" or "lagoon buffer," but over which the City holds no property interest.

10. Assumption of Risk

- A. By acceptance of this coastal development permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, storms, floods and erosion; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the

Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. PRIOR TO ANY CONVEYANCE OF ANY OF THE APPLICANT'S PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: i) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and ii) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a copy of a written agreement by the applicant, in a form and content acceptable to the Executive Director, accepting all of the above terms of this condition.

11. Operation of Tidal Gates

In order to enhance tidal exchanges and improve water quality in the lagoon, the applicant shall coordinate with the County of Los Angeles Department of Beaches and Harbors to improve the operation of the Ballona Lagoon tidal gates located at the southern end of the lagoon beneath Via Marina. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide the Executive Director with the tidal gate schedule of operation and the City's recommendations for improvement of the tidal gate operation.

12. Condition Compliance

Within 180 days of Commission action on this coastal development permit application, or within such time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions Chapter 9 of the Coastal Act.

V. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The City of Los Angeles Department of Public Works is proposing to enhance public recreational opportunities and to restore natural habitat areas along the west bank of Ballona Lagoon in Venice (Exhibit #4). Ballona Lagoon is located in the Silver Strand/Marina Peninsula area of Venice in the City of Los Angeles, adjacent to the Marina del Rey entrance channel (Exhibit #1). The certified Venice Land Use Plan (LUP) designates Ballona Lagoon and its lower banks, including part of the protective lagoon buffer strip, as an Environmentally Sensitive Habitat Area (Exhibit #2: ESHA). The currently proposed project site includes only the west bank of Ballona Lagoon, from Via Marina to Grand Canal, with no work proposed below the high water line: elevation +2.7 mean sea level (MSL).

The proposed development includes: 1) removal of non-native vegetation (primarily comprised of large beds of iceplant) and encroachments from the **protective lagoon buffer strip** (including, but not limited to, unpermitted fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping); 2) revegetation with native dune plants, 3) realigning and improving the west bank public access trail between Topsail Street and Canal Court, 4) construction of a split rail fence along the public access trail, 5) construction of public overlooks with benches at four street ends (Union Jack, Voyage, Westwind and Yawl Streets), and 6) construction of a public education/information area with benches near Jib Street at the northern end of the lagoon (Exhibit #4).

The **protective lagoon buffer strip** is the strip of public and private land that exists between the waters of Ballona Lagoon and the permitted (and pre-Coastal Act) development that exists on the upper lagoon banks (e.g. private residences and yards, streets and street ends). The 25-to-80 foot wide protective lagoon buffer strip on the west bank includes: the City's ten-foot wide Esplanade West right-of-way, City-owned Lots G through P, the unsubmerged portions of Lot C and Lot R, and the protected habitat areas and easements on private property that have been required and/or identified by previously approved coastal development permits (See Exhibit #2, ps. 1-4). The protective lagoon buffer strip includes the environmentally sensitive habitat areas (ESHA) that exist near the waters of the lagoon as well as the upper bank areas situated closer to the private residential development and Pacific Avenue.

The City has agreed to accept and restore the fifteen-foot wide habitat and access easements have been dedicated (for the creation of the protective lagoon buffer strip) across twenty of the privately-owned lagoon-fronting properties between Via Marina and Topsail Street. Each lagoon-fronting lot owner on the west bank who has received a coastal development permit for development, as a condition of developing their property, has offered to dedicate an easement for habitat protection and/or public access across part of their property. [See Coastal Development Permits P-78-2737 (Sevilla & Dubin), P-78-3123/A-281-77 (Cashin), 5-85-371 (Wyatt), 5-86-819 (Rome), 5-87-500 (Rome), 5-88-1053 (Rome), 5-89-593 (MDR Properties), 5-97-015 (Ganezer), 5-97-363 (Paragon), 5-97-220 (Paragon), 5-98-328 (Garcia), 5-00-001 (Garcia), 5-01-306 (VDH) & 5-01-307 (VDH)]. The City of Los Angeles, California Coastal Conservancy and the Ballona Lagoon Marine Preserve (BLMP) have accepted the habitat and

access easements that exist across twenty of the west bank lots south of Topsail Street. The Department of Public Works is in the process of transferring ownership of the easements now held by the Coastal Conservancy and BLMP to the City. Therefore, the proposed project would result in the restoration of the entire west bank protective lagoon buffer strip, including all of the City-owned properties on the west bank (including the Esplanade West right-of-way and several individual lots) and the habitat easements on the private lots. Across three west bank lots south of Topsail Street, the City would hold an easement only for public access. The City has not proposed habitat restoration over those areas, or on any lot with no easement at all, as the property owners are subject to the habitat requirements set forth in their individual coastal development permits.

The City is preparing to inspect and survey of all the west bank easements in preparation for the proposed removal of encroachments from the protective lagoon buffer strip. The encroachments in the buffer strip, placed there by the adjacent residents, include unpermitted development such as fences, walls, lighting, irrigation improvements, decks, patios and residential landscaping. Subsequent to the survey, the City intends to send abatement orders to the property owners who have unpermitted development within the City-owned easements and rights-of-way.

The proposed project would be the third phase of the Ballona Lagoon Enhancement Plan (BLEP) to be implemented. The BLEP was developed in 1992 by the Ballona Lagoon Marine Preserve (BLMP) and the California State Coastal Conservancy. The BLMP is a non-profit group consisting of members of the local community. Prior phases of the Ballona Lagoon Enhancement Plan have been implemented on the east bank, south end, and in the submerged areas of Ballona Lagoon pursuant to the Commission's approval of Coastal Development Permit 5-95-152 and subsequent permit amendments (City of LA/BLMP/Coastal Conservancy). The City is the only applicant for the currently proposed project.

The previously approved phases of the BLEP were funded and implemented by the California State Coastal Conservancy, the City of Los Angeles and the BLMP. The completed portions of the BLEP include: 1) improvement of a public access trail and split rail fence along the entire east bank of the lagoon, 2) revegetation of the east bank of the lagoon with native plant landscaping, 3) dredging of the channel and creation of a deep-water pool at the south end of the lagoon to improve hydrological conditions, 4) construction of a public view deck/education area at the southern end of the lagoon near Via Marina, and most recently 5) installation of filtered catch basins and stormceptors in the west bank storm drains that discharge into the lagoon. The filtered catch basins and stormceptors were installed in the west bank storm drains pursuant to Coastal Development Permit 5-00-161 (City of LA). The provision of the east bank public access trail was a requirement of Coastal Development Permit A-266-77 (ILA). All the other completed BLEP improvements were approved by Coastal Development Permit 5-95-152 and subsequent permit amendments (City of LA/BLMP/Coastal Conservancy).

The proposed project includes improvements to the public access opportunities that exist along the west bank of Ballona Lagoon. On the west bank, an unimproved trail already exists between Canal Court on the northern end (near Grand Canal) and Topsail Street near the southern end of the lagoon (Exhibit #2). The existing informal trail is proposed to be realigned and improved primarily as a five-foot wide decomposed granite public access path (with

fencing), with one section of existing concrete walkway on the Esplanade West (north of Jib Street) being incorporated within the new trail (Exhibit #4). The proposed new trail and fence along the west bank would be located entirely on City land, connecting the existing improved Grand Canal public accessway to the Pacific Avenue public sidewalk at Topsail Street (Exhibit #4, p.1). No fill will be placed below the high water line in order to create the proposed trail. For clarification purposes, the following description of the proposed public improvements is divided into three geographic sections of the west bank: the southern section, middle section and northern section (See Exhibit #2, ps. 1-4). The City's current proposal is not divided into separate areas or phases, as it is one single proposal.

Southern Section - West Bank Ballona Lagoon (Exhibit #2, p.2)

The southern section of the west bank is the section located south of Topsail Street where 25 privately owned residential lots occupy most of the land, on Blocks 1 through 5 of the Del Rey Beach Tract (Exhibit #4, ps.7-8). This section of the west bank is where the twenty habitat and/or access easements exist on the developed residential properties (Exhibit #2, p.2). It is also the section where most of the encroachments exist within the protective lagoon buffer, which the City is proposing to remove.

The public access improvements proposed along the southern section of the west bank, between Via Marina and Topsail Street, would be located on the four street ends situated east of Pacific Avenue (Union Jack, Voyage, Westwind and Yawl Streets). As proposed, a public overlook with a bench, trash receptacle and interpretive sign would be developed at the east end of each street where it abuts the Esplanade West right-of-way (Exhibit #5). The only public parking that will exist within the project area at the conclusion of the proposed development is the existing informal parking area on the Yawl Street End, which is not being affected by the proposed project. A previously proposed public access trail along the lagoon's edge through this section of the west bank was deleted from the project in 2001. Instead of building a new trail between the existing residences and the waters of the lagoon between Topsail Street and Via Marina, the City would continue to provide public access through this section on the public sidewalk that exists along the west side of Pacific Avenue. Therefore, with no new trail being built, the entire protective lagoon buffer strip in the southern section of the west bank would be restored with native vegetation, subsequent to the applicant's proposed removal of the encroachments and non-native plants. A new fence would be installed along the inland edge of each habitat easement, or along the inland edge of the Esplanade West right-of-way where no easement exists inland of the right-of-way (Exhibit #5).

Middle Section - West Bank Ballona Lagoon (Exhibit #2, p.3)

The middle section of the west bank is the section located north of Topsail Street and south of Jib Street, where the City owns all of the west bank lots (Lots G through P) situated between the lagoon and Pacific Avenue (Exhibit #2, p.3). No residences or other private development exist in this section of the west bank. Also, there is no Esplanade West right-of-way in the middle section. Between Topsail and Jib Streets, there exists an informal pathway that meanders along the higher elevations of the west bank near the eastern curblin of Pacific Avenue. This public open space area is a very popular dog walking area, as evidenced by the prodigious amounts of feces.

The applicant's proposed new five-foot wide decomposed granite public access trail would mimic the existing informal trail by meandering along the higher elevations of the west bank, and staying close to Pacific Avenue where the bank narrows in width (Exhibit #4, ps.3-6). The applicant proposes to install a 36-inch high split rail fence (with green vinyl-coated chain-link fence) along the east (lagoon) side of the meandering trail to protect the lagoon habitat area from intrusion by people and domestic animals (Exhibit #3, p.2). The proposed new trail and fence through the middle section of the west bank would be located entirely on City land. No fill will be placed below the high water line in order to create the proposed trail. The existing Lighthouse Street pedestrian bridge, the only bridge over the lagoon and an important coastal access route, will not be affected by the proposed project. The applicant proposes also to remove the non-native plants that exist in middle section of the west bank, and vegetate the area with native plants (the area not covered by the new proposed public access trail).

Northern Section - West Bank Ballona Lagoon (Exhibit #2, p.4)

The northern section of the west bank is the section located north of Jib Street and south of Grand Canal where seven privately owned residential lots abut the Esplanade West right-of-way (Exhibit #4, p.2). At least three of the residential developments have encroached into the Esplanade west right-of-way with private development (e.g. decks, play sets and landscaping). The City is not proposing to remove the encroachments from its land in the northern section of the west bank at this time (See Sections D&E of this report). The City owns Lot R, which is the land and water area situated on the lagoon-side of the Esplanade West right-of-way (Exhibit #2, p.4). No habitat and/or access easements exist on the private lots along this section of the west bank as most of the development (apartments and single-family residences) occurred before 1973 when coastal development permits were first required.

At Jib Street near the north end of the lagoon, the City proposes to construct a public education/information area next to the west bank public access trail (Exhibit #4, p.3). The public education/information area would have public benches and information kiosks. On Pacific Avenue near the proposed public education/information area, the City proposes to close an unimproved public parking area (four spaces) situated in the Jib Street right-of-way by constructing a new curb and gutter on the east shoulder of Pacific Avenue (Exhibit #4, p.3).

The proposed new public access trail and fence in the northern section of the west bank, which would replace an existing informal path, runs between Jib Street and Canal Court in front of the existing residences near the waters of the lagoon. The proposed new trail and fence through the northern section of the west bank would be located entirely on City land, connecting the existing improved Grand Canal west bank public accessway to the trail currently being proposed along the east side of Pacific Avenue south of Jib Street (Exhibit #4, p.1). One section of an existing ten-foot wide concrete walkway on the Esplanade West right-of-way (immediately north of Jib Street) is being incorporated within the new proposed trail. The exact trail alignment is discussed in subsequent sections of this staff report (See Sections D&E), because one segment of the applicant's proposed trail alignment would be on Lot R near the waters of the lagoon instead of within the Esplanade West right-of-way next to the residences. The applicant proposes also to remove the non-native plants that exist in northern section of the west bank, and vegetate the area with native plants (the area not covered by the new proposed public access trail and the existing private encroachments).

B. Ballona Lagoon

Ballona Lagoon is located in the Silver Strand/Marina Peninsula area of Venice in the City of Los Angeles, adjacent to the Marina del Rey entrance channel (Exhibit #2). The lagoon is an artificially confined tidal slough connecting the Venice Canals to the Pacific Ocean via the Marina del Rey harbor entrance channel. The certified Venice LUP designates the 4,000-foot long lagoon and its lower banks as an Environmentally Sensitive Habitat Area (Exhibit #2: ESHA). The waterway is a critical foraging habitat area for the California least tern and many other species (Exhibit #6). The native vegetation consists of coastal dune plants on the lagoon bank, with wetland plants near the water (Exhibit #6).

The lagoon is 150-200 feet wide and contains approximately sixteen acres of open water and wetland area. The tidal regime in Ballona Lagoon is restricted by an automated tide gate located at the southern end of the lagoon where three seven-foot diameter pipes connect the lagoon to the waters of the Marina del Rey entrance channel (Exhibit #2). The Los Angeles County Department of Beaches and Harbors operates the tide gate. The automated tide gate limits the peak tidal elevation in Ballona Lagoon to approximately 2.65 feet above MSL. The low water level (MLLW) in the lagoon is recorded as -1.88 MSL.

The parts of the lagoon situated below the low water level of -1.88 MSL are referred to as subtidal habitat areas because they are habitat areas that are always under water. The parts of the lagoon that are sometimes covered by water, but are exposed when the water is at its lowest level, are referred to as intertidal habitat areas. Intertidal habitat areas, like sand bars and the mudflats located on the east and west banks of the lagoon, are exposed during the lowest tides and are underwater during the highest tides. Upland areas are located above the high water line (+2.65' MSL) and are always dry (except when irrigated and when wet from rain and dew). The water depths in the lagoon vary from zero to eight feet depending on the tide level and the location of measurement. Since the completion of the dredging approved by Coastal Development Permit Amendment 5-95-152-A1, the deepest bottom elevations (-6.0' MSL) are found in the deep-water pool that was created at the southern end of the lagoon near Via Marina.

Lot C and Lot R, which are remnants of the original Spanish land grant, comprise most of the submerged areas within Ballona Lagoon. At the southern end of the lagoon, the submerged area (Lot C) located between Topsail Street and Via Marina is owned by the Summa Corporation. The Summa Corporation has granted to the City of Los Angeles a permanent conservation/open space easement over Lot C. Part of Lot C is not submerged and comprises the part of the west bank protective lagoon buffer strip (along with the Esplanade West City right-of-way) that exists between the water and the private residential development at the southern end of the lagoon (Exhibit #2, p.2). The City's easement over Lot C allows for subtidal and intertidal habitat maintenance and the preservation of the natural and scenic character of the easement. The submerged area within the northern two-thirds of the lagoon is Lot R. Lot R, owned by the City of Los Angeles, extends north from Topsail Street to Grand Canal at the extreme northern end of lagoon, and also comprises part of the protective lagoon buffer strip above the waterline (Exhibit #2, p.4).

The banks of the lagoon are remnants of coastal sand dunes. Beds of iceplant cover large sections of the west bank. The banks are generally steep, varying from 1:1 to 1:2, and are

comprised primarily of sandy silt soils. Because of the steepness and composition of the banks, erosion has been a significant problem, especially where street drains and path drains run into the lagoon. Bank erosion is especially prevalent on the west bank of the lagoon at Jib Street and Topsail Street, where gullies extend as far inland as Pacific Avenue. Due to the bank erosion on the west side of the lagoon, part of the unimproved Esplanade West City right-of-way (between Topsail Street and Union Jack Street) is submerged or within the intertidal area (Exhibit #4, p.7).

Ballona Lagoon is surrounded by a highly urbanized area of single-family and multiple-family residential development. The properties along the east and west banks of the lagoon are developed with single-family residences and a few duplexes. Each structure is set back at least 25 feet from the waters of the lagoon. On the east bank of the lagoon, a lagoon buffer strip, required by Coastal Development Permit A-266-77 (ILA), separates the private residential development from the waters of the lagoon. An undeveloped City right-of-way (Esplanade East) comprises part of the forty-foot wide lagoon buffer on the east bank (Exhibit #2, ps.2-4). The remainder of the forty-foot wide east bank lagoon buffer is comprised of front yard setbacks in addition to a 24 to 30-foot wide portions of the lagoon fronting lots that have been dedicated as open space and public access easements. Pursuant to Coastal Development Permit A-266-77 (ILA), each lagoon fronting lot owner on the east bank, as a condition of individual permits for developing their property, is required to offer to dedicate a 24-to-30-foot deep easement for habitat protection and public access as part of the forty-foot wide lagoon buffer. An improved public access trail with fencing runs along the entire east bank of Ballona Lagoon, within the east bank lagoon buffer strip.

A similar but narrower protective lagoon buffer strip exists on the west bank. The west bank of Ballona Lagoon is comprised mostly of unimproved City-owned lands: Lot R (underlying the northern end of the lagoon and including some dry banks), Lots G through P (between Jib Street and Topsail Street), and the Esplanade West right-of-way north of Jib Street and south of Topsail Street (Exhibit #2, ps.1-4). The City-owned Lots G through P (between Jib Street and Topsail Street), are undeveloped and form a protective buffer strip between the waters of the lagoon and Pacific Avenue. A dirt path runs on City property parallel to Pacific Avenue from the northern end of the lagoon to Topsail Street near the southern end. As it does on the east bank, the undeveloped City right-of-way (Esplanade West) comprises part of the protective lagoon buffer strip where it exists on the west bank, except in the eroded areas where it is submerged and is part of the water area of the lagoon. On the northern and southern ends of the west bank of Ballona Lagoon, however, private development encroaches onto and over the Esplanade West right-of-way.

South of Topsail Street, there are 25 privately owned lots on the west bank. There is no public path south of Topsail Street along the west bank, although there is a City sidewalk on the west side of Pacific Avenue. Twenty-three of the 25 privately owned lots on the west bank have already been developed with single-family residences or apartments (Exhibit #3). All but one of the existing residential developments were built after 1972 with Commission-approved coastal development permits. Only two of the privately owned lots remain undeveloped.

When approving coastal development permits for the construction of residences on the west bank of the lagoon, the Commission has required the provision of a minimum 25-foot wide protective lagoon buffer strip between the water and the private development in order to

ensure that adequate area exists for habitat protection and a potential future west bank public access trail. Where the Esplanade West right-of-way is on dry land, the minimum 25-foot wide west bank lagoon buffer strip is comprised of the ten-foot wide Esplanade West right-of-way and the first fifteen-feet of each developed lot adjacent to the Esplanade West. The buffer is wider than 25 feet in the areas where the dry land portion of Lot C exists on the lagoon bank between the water and the Esplanade West right-of-way. Where the Esplanade West right-of-way is under water, the minimum 25-foot wide west bank lagoon buffer strip includes a larger portion of the private lot [See Coastal Development Permits 5-01-306 (VDH), 5-01-307 (VDH) & 5-02-133 (Fitzgerald)].

The first fifteen-feet of seventeen private developed lots (adjacent to the Esplanade West south of Topsail Street) has been offered as an easement (as a condition of each Commission-approved permit) in order to create a contiguous protective lagoon buffer strip between the west bank homes and the water. Three additional lots have easements for public access. The City has accepted all the outstanding offers of dedication for easements on the west bank and is in the process of transferring ownership of the easements that were previously accepted by the BLMP and Coastal Conservancy.

In several locations, private fences, walls, lighting, irrigation improvements, decks/patios and landscaping encroach into the required lagoon buffer strip easements and the esplanade West right-of-way situated between the water and the west bank residences. Based on a review of historical aerial photographs and permit history, Commission staff has determined that the encroachments located on the 23 properties where coastal permits have previously been issued were installed after 1973 without the required coastal development permits. As part of the currently proposed project, the City would remove the unpermitted development and private encroachments from the areas of the protective lagoon buffer strip over which the City holds (or will hold) an easement for habitat restoration.¹ The protective lagoon buffer strip would then be restored with native dune vegetation.

The northern end of Ballona Lagoon connects to Grand Canal, which is part of the Venice Canals system (Exhibit #2). The northern Venice Canals are connected to the north end of Grand Canal by pipes that pass beneath the Washington Boulevard bridge. All of the water in the Venice Canals, except for discharges from stormdrains and other sources, originates in the Marina del Rey entrance channel and must pass through Ballona Lagoon and Grand Canal before it reaches the furthest northern reaches of the canals system.

C. Legal Ability to Develop

The project area includes several pieces of property owned by the City of Los Angeles, including the eastern ends of several east-west running streets (referred to as the "street ends"), the Esplanade West right-of-way south of Topsail Street and north of Jib Street, Lot R, and Lots G through P between Jib Street and Topsail Street (Exhibit #2). The City-owned lands are largely undeveloped and form part of the protective buffer strip between the waters

¹ Across three west bank lots south of Topsail Street, the City would hold an easement only for public access. The City has not proposed habitat restoration over those areas, or on any lot with no easement at all, as the property owners are subject to the habitat requirements set forth in their individual coastal development permits.

of the lagoon and the abutting developments. The City holds title to and owns in fee Lots G through P and Lot R.

1. Esplanade West Right-of-Way

The project area also includes parts of the Esplanade West right-of-way. The City claims that it holds fee title to that strip of land – as well as to all other rights-of-way identified on the original 1905 Silver Strand Subdivision Tract Map (“Tract Map”) – due to its acceptance of the dedication of those rights-of-way made via the Tract Map. At least one of the residents on the west bank has argued that the City does not have any property interest in the Esplanade West right-of-way, and that the ownership of the Esplanade West right-of-way has reverted to the owners of the lots that abut it. The City has contested the resident’s claims and has made a valid argument that the right-of-way is a properly dedicated and accepted City “street,” over which the abutting landowners cannot acquire title by occupying it as asserted.

The Commission is not authorized to resolve such real property disputes. However, Section 30601.5 of the Coastal Act does require the Commission to inquire as to whether an applicant hold fee title to the property on which it proposes to perform development or whether it otherwise has a legal right to use the property as proposed. Section 30601.5 of the Coastal Act states:

Where the applicant for a Coastal Development Permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the Commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, the applicant shall demonstrate the authority to comply with all conditions of approval.

Pursuant to this condition and associated Commission regulations, the Commission requires that applicants provide evidence of ownership or other interest in the subject properties before the Commission will process a permit application. However, where an applicant presents evidence of ownership, and a third party disputes that evidence, the Commission generally avoids inserting itself into the property dispute. Since the applicant here has provided a colorable argument in support of its claim of ownership, the Commission will defer to its claim and proceed accordingly.

If the dispute progresses and eventually results in a final ruling from a court of competent jurisdiction indicating that the current applicant does not have a sufficient legal interest in the subject property to conduct portions of the proposed development, as conditioned, then the applicant will not be able to undertake such development, and the Commission’s authorization, through this coastal development permit, will in no way conflict with that ruling. In the event that a court of law determines that the City does not own the Esplanade West right-of-way, the Commission would accept a permit amendment request from the applicant to move the public access trail off of the Esplanade West.

Nothing in this permit purports to authorize any party to perform work on any property in which it does not have a sufficient legal interest, under applicable principles of Property Law, to conduct such work. The authority granted by this permit is only for purposes of the Coastal Act. Nevertheless, in keeping with the deference to the applicant's position, for purposes of the pending application, the staff report and findings treat the Esplanade West right-of-way as owned by the City of Los Angeles.

2. Habitat Easements on Private Property

The proposed project also includes development on several pieces of property that are undisputedly owned by other entities. The affected privately properties are Lot C, a privately owned submerged lot within the southern end of Ballona Lagoon, and portions of privately-owned residential lots on the west bank south of Topsail Street, each of which is burdened by an easement (held by the City, BLMP or the California Coastal Conservancy) or an offer to dedicate an easement for habitat restoration and/or public access (Exhibit #4). The City has the legal ability to undertake the proposed development on the properties not under its ownership where it holds an easement that allows the proposed restoration work. The owners of Lot C (Summa Corp.) have granted the City of Los Angeles the legal ability to undertake the proposed project on Lot C in the form of an easement for conservation purposes. This easement allows for subtidal and intertidal habitat maintenance and the preservation of the natural and scenic character of the easement.

Twenty of the privately-owned lots on the west bank of the lagoon have an easement that allows for habitat restoration and/or public access (Exhibit #4, ps.7&8). The City has agreed to accept the transfer to the City of any of these easements currently held by other entities and to include the areas they cover in the proposed restoration project (Exhibit #7). Therefore, the proposed project includes work within these easement areas.

Pursuant to Section 30601.5 of the Coastal Act, where the applicant is not the fee interest property owner, the applicant cannot apply on its own for a coastal development permit for the proposed project unless the applicant can demonstrate a legal right to use the property for the proposed development. The individual fee interest property owners fronting the lagoon have not joined in the application. However, the City will have the legal ability to undertake the proposed development, even on the portions of the site that it does not own, once the easements offered to be dedicated by the individual property owners affected by the proposed project have been accepted by the City. The City is currently in the process of accepting the easements.

In order to ensure that the City has the legal ability to undertake the proposed restoration project on the entire west bank lagoon buffer before work commences (rather than restoring the buffer piece-by-piece), and in accordance with the applicant's offer and the requirements of Coastal Act Section 30610.5, the Commission requires that the easements be accepted before permit issuance. Consequently, Special Condition One has been imposed to ensure that easements which have been offered to be dedicated but have not been accepted by the applicant are accepted by the applicant prior to permit issuance. Compliance with the condition will ensure that the applicant has the legal ability to complete the proposed restoration of the entire west bank protective lagoon buffer strip. Without the City's acceptance of these easements, significant segments of the lagoon buffer would not be restored. Many of

the easements are currently occupied by unpermitted development that encroaches into the protective lagoon buffer strip.

3. Lagoon Buffer on Private Property with Access Easements

In addition, there are also three west bank properties burdened by an easement for public access, but which have no easement for habitat restoration (5112, 5510-5516 Pacific Avenue). These west bank properties, under the proposed project, would not have an accessway developed over them. Because there is no easement for habitat restoration on these three properties, they would not be included as part of the proposed project. The owners of these three properties, as conditions of their coastal development permits, are required themselves to restore and maintain the habitat within the protective lagoon buffer that is identified and required on the lagoon side of these three properties. If the owners grant permission to the City, and the City agrees to do so, the areas covered by the three access easements would be vegetated with native plants. Some unpermitted development, however, has occurred within the lagoon buffer on these properties, landward of the City-Esplanade West right-of-way. In order to provide for adequate habitat buffers and allow for potential resolution of some or all of those violations as part of this permit, Special Condition Nine authorizes removal by the City of any development (e.g. unpermitted fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping) from any required "habitat buffer" that was imposed by condition of approval of a coastal development permit on private property but where a recorded habitat easement was not required. Special Condition Nine would allow the City to remove the unpermitted development and complete the habitat restoration on these properties on behalf of the owners, but only if the owners agree. Only with this condition could the permit authorize the City to complete the proposed restoration project on the entire west bank protective lagoon buffer strip.

D. Marine Resources and Environmentally Sensitive Habitat Areas (ESHA)

The Coastal Act contains several policies that protect marine resources and marine habitats from the adverse impacts of development. The following Coastal Act policies apply to the proposed project because it would occur within the protective lagoon buffer strip that provides protection for the wetland and marine environments that exist in Ballona Lagoon. No fill or work is proposed below the high water line (+2.65 MHTL). The permit for the proposed Ballona Lagoon west bank enhancement project is being conditioned to conform to the following Coastal Act policies.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Ballona Lagoon is an integral part of the larger Venice Canals/Ballona Lagoon wetlands system. Seawater enters the wetlands system through tidal gates that control the flow from the Marina del Rey entrance channel into Ballona Lagoon. Ballona Lagoon is a wetland and an Environmentally Sensitive Habitat Area (ESHA) protected by the above-stated Coastal Act policies. Sections 30230, 30231 and 30240 of the Coastal Act require that the natural resources of Ballona Lagoon and the ESHA on the banks be protected, restored and enhanced.² In order to protect this ESHA, the Commission, through prior coastal development permit actions, has identified and required the provision of a protective lagoon buffer strip between the waters of the lagoon and the permitted development adjacent to the lagoon. The protective lagoon buffer strip includes the environmentally sensitive habitat areas (ESHA) that exist near the waters of the lagoon as well as the non-ESHA areas on the upper banks situated closer to the private residential development and Pacific Avenue.

Unfortunately, the wetland and upland habitat in and adjacent to Ballona Lagoon (i.e., salt marsh, sidebanks, mudflats, and marine habitat) is negatively affected by the lagoon's proximity to human activity, urban runoff, and the abundance of invasive non-native vegetation. Despite this, Ballona Lagoon provides habitat for a variety of benthic invertebrates, fish and shorebirds (Exhibit #6). [See also Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981].

Polychaetes, mulluscs and other invertebrates live in the mud bottom of the lagoon. Several species of fish have been documented and are known to inhabit the lagoon and canals, including: Topsmelt, California killifish, bay pipefish, longjaw mudsuckers, halibut, arrow goby, and diamond turbot. Fish-eating birds such as egrets and green herons are often seen foraging at the water's edge. Willets, dowitchers and dabbling ducks also forage on the mud

² Due to Ballona Lagoon's status as a wetland, Coastal Act Section 30233 could override some of the protections provided by other sections, such as 30240, but only for projects proposing filling, diking, or dredging of the actual wetland areas. No such proposals are being made in the context of this project.

banks, while domesticated ducks are attracted by food and water left by nearby human residents. Ballona Lagoon is a critical habitat area for the California least tern, Sterna antillarum browni. Both the least terns and Brown pelicans can be seen foraging in the lagoon. No other Federal or State listed endangered species are known to inhabit or to visit the Venice Canals.

Ballona Lagoon is located about five hundred feet east of the Venice Beach California least tern colony, one of the largest and most productive colonies of California least terns remaining in the state (Exhibit #2, p.1). The California least tern, Sterna antillarum browni, is a Federal and State listed endangered species. The least tern is migratory and generally arrives in the project area each year in early April, and departs in early autumn. Least terns capture small fish for their newly hatched chicks in the nearby ocean, wetlands, lagoons and canals. These fish include northern anchovies, gobies, topsmelt, various surf perch, killifish, mosquitofish, and other lagoon and estuarine fish species.

The proposed project involves the implementation of Phase III of the Ballona Lagoon Enhancement Plan (See Section A: Project Description). The goals of the project are to improve the habitat values in the lagoon and on the west bank, and to improve existing public access and recreational opportunities. The following findings address the various components of the proposed project (trail alignment, location of public access amenities, drainage improvements, removal of unpermitted development and revegetation with native plants) and the project revisions and special conditions that the Commission is imposing so the approved development can be found to comply with the requirements of Sections 30230, 30231 and 30240 of the Coastal Act.

1. Alignment of the Public Access Trail

The proposed project includes improvements to the public access opportunities that exist along the west bank of Ballona Lagoon. On the west bank, an unimproved trail already exists between Canal Court on the northern end of the lagoon (near Grand Canal) and Topsail Street near the southern end of the lagoon (Exhibit #2). The existing informal trail is proposed to be realigned and improved primarily as a five-foot wide decomposed granite public access path (with fencing), with one section of existing concrete walkway on the Esplanade West (north of Jib Street) being incorporated within the new trail (Exhibit #4). The proposed new trail and fence along the west bank would be located entirely on City land, connecting the existing improved Grand Canal public accessway to the Pacific Avenue public sidewalk at Topsail Street (Exhibit #4, p.1). No fill will be placed below the high water line in order to create the proposed trail.

For clarification purposes, the following findings addressing the alignment of the new west bank public access trail is divided into three geographic sections of the west bank: the southern section, middle section and northern section (See Exhibit #2, ps. 1-4). The City's proposed project is not divided into separate areas or phases, as it is one undivided project proposal.

a. Northern Section of the West Bank- Public Access Trail (Exhibit #2, p.4)

The northern section of the west bank is located north of Jib Street and south of Grand Canal where seven privately owned residential lots abut the Esplanade West right-of-way (Exhibit #4,

p.2). The trail alignment through this section is one of the most controversial parts of the proposed project because at least three residences have encroached into the Esplanade West right-of-way with private development (e.g. decks, play sets and landscaping), and the applicant is not proposing to remove these encroachments from its land at this time.

The first segment of the applicant's proposed trail north of Jib Street, where it veers away from Pacific Avenue towards Grand Canal at the northern end of the lagoon, would be located on a ten-foot wide concrete walkway that exists on the Esplanade West right-of-way in front of the apartment building located at 4000 Pacific Avenue. This existing concrete walkway dead-ends near two private decks (i.e. Ms. Kennerly's deck) that have been built over the Esplanade West right-of-way (Exhibit #4, p.2: "Encroaching Decks"). At this point, in order to allow the residents to keep the decks that encroach over the Esplanade West right-of-way, the applicant proposes to construct a new five-foot wide decomposed granite public access trail in the lagoon buffer area (Lot R) situated between the Esplanade West right-of-way and the waters of the lagoon (Exhibit #3, p.1). The City of Los Angeles owns Lot R, which is the land and water area situated on the lagoon-side of the Esplanade West right-of-way (Exhibit #2, p.4). No habitat and/or access easements exist on the private lots along this section of the west bank as most of the development (apartments and single-family residences) occurred before 1973 when coastal development permits were first required.

The applicant's proposed alignment for this segment of the new trail (between canal court and the existing concrete walkway) would generally follow the alignment of the informal path that exists between the water's of the lagoon and the residences on the northern section of the west bank (Exhibit #2, p.4). This proposed alignment would place this segment of the new trail outside of the Esplanade West right-of-way and closer to the lagoon (and closer to the ESHA that exists along the water's edge) in order to avoid the private encroachments (i.e. decks) that are currently occupying and obstructing access on the Esplanade West right-of-way (Exhibit #3, p.1). Instead of removing the private encroachments from the Esplanade West right-of-way to make way for the new trail, the applicant is proposing to align the new trail around the encroachments and is offering to issue revocable permits to the residents on the northern section of the west bank. The City's revocable permits would allow the residents' private encroachments to remain on the Esplanade West right-of-way until such time as the private properties are redeveloped with new homes. When new homes are permitted, if ever, the City states that they would be subject to the current setback requirements and the owners would be required to remove the encroachments from the City's land. The fronts of the existing homes with the encroachments are set back less than two feet from the property line shared with the Esplanade West right-of-way, and their decks extend all the way over the abutting right-of-way and onto Lot R (Exhibit #3, p.1).

Section 30240(b) of the Coastal Act requires that development in areas adjacent to ESHA and recreation areas be sited and designed to prevent impacts that would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. In this case, Section 30240(b) requires that a buffer be provided between any approved development (i.e. the proposed public access trail) and the ESHA that exists in the lagoon and above the lagoon's waters and intertidal area. Buffers and development setbacks protect biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. In prior coastal development permit actions approving development adjacent to Ballona Lagoon, the Commission has required the provision of a

protective lagoon buffer strip between the development and the ESHA that exists along the banks of the lagoon, including numerous instances where the private property owners were required to dedicate part of their lots to increase the width of the buffer. No additional dedications of private property are being required pursuant to this permit approval, but the Commission is requiring that the buffer between the waters of the lagoon and the new public access trail be widened through the use of the available public lands, including the Esplanade West right-of-way.

The applicant's proposed west bank public access trail at the northern end of Ballona Lagoon is aligned along the edge of the ESHA that exists above the lagoon's waters and intertidal area, inconsistent with the requirement of Section 30240(b) to site the development to prevent impacts that would significantly degrade the ESHA. Many species of birds, including the endangered California least tern and brown pelican, forage in the ESHA at the northern end of the lagoon. Staff has observed that people and animals using the existing informal west bank trail often disturb the birds at the edge of the lagoon as the existing path passes close to the water's edge. The existing path is not fenced and is located on Lot R, rather than within the Esplanade West right-of-way that runs along the inland edge of the public land that forms the buffer between the waters of the lagoon and the residential development at the northern end of the lagoon (Exhibit #2, p.4).

The public's use of the trail near the ESHA and the resulting disturbance of the wildlife in the ESHA is a significant impact that must be avoided when designing the new public access trail. Also, the physical construction of a new trail and fence across part of Lot R would displace some of the natural undisturbed area, as opposed to placing the trail in the Esplanade West where physical development already exists. Therefore, staff is recommending that the new trail be aligned within the Esplanade right-of-way in order to maximize the width of the protective lagoon buffer between the new public trail and the waters of the lagoon. The width of the buffer should be widened beyond what the City is proposing in order to reduce the occurrences where trail users disturb the wildlife that depends on the habitat at the northern end of the lagoon for foraging and resting. The City proposes to install a 36-inch high split rail fence (with green vinyl-coated chain-link fence) along the east side of the meandering trail to protect the lagoon habitat area from intrusion by people and domestic animals (Exhibit #3 p.2).

The required alignment of the new trail within the Esplanade West right-of-way requires the removal of the private development (i.e. decks and landscaping) that currently encroaches over the right-of-way and onto Lot R. Special Condition Two requires the applicant to remove the encroachments from the City property (i.e. Esplanade West, Lot R and City-owned easements). The residents with the encroachments object to the removal of their decks from the public land and the staff's recommended alignment of the new trail in the Esplanade right-of-way near the front of their homes. But the encroachments must be removed from the Esplanade West right-of-way and Lot R in order to use the public land for the protective lagoon buffer that is necessary to avoid significant impacts to the ESHA. Only as conditioned to remove the encroachments from the public land and to align the trail along the inland part of the protective lagoon buffer within the Esplanade West right-of-way is the proposed project consistent with Section 30240(b) and the marine resource policies of the Coastal Act.

Since some of the houses are set back only two feet from the property line that abuts the Esplanade West right-of-way, the residents say a trail in the Esplanade right-of-way is too

close to their house and should be placed closer to the waters of the lagoon, as the City has proposed (Exhibit #3, p.1). The Esplanade West right-of-way is ten feet wide, and the proposed trail would be five feet wide. So there is room within the right-of-way to provide a five-foot wide buffer between the new trail and the property lines of the abutting residential lots. This five-foot wide buffer between the private property and the new trail, along with a fence or privacy wall and the structural setbacks provided on the private lots, provides adequate distance and privacy between trail users and the residences. Therefore, subsequent to the applicant's required removal of the encroachments from the Esplanade West right-of-way on the northern end of Ballona Lagoon, a five-foot wide buffer may be provided between the new trail and the adjacent homes where the public trail must pass between the waters of the lagoon and existing private residences.

The applicant's proposal to allow the continuance of private residential encroachments in the Esplanade West also raises a question of basic fairness and equal application of the law. The Commission has, in numerous prior coastal development permit actions, required landowners on both banks of Ballona Lagoon to dedicate part of their private property (15-to-30 feet) in order to create a wider lagoon buffer. The properties at the northern end of the lagoon, whose homes were constructed prior to 1973 without coastal development permits, have not been required to dedicate any portion of their land for a protective lagoon buffer strip. However, if the City is correct about its ownership of the Esplanade west right-of-way, the property owners in that area do not own the Esplanade West, as that area was dedicated to the City as a right-of-way. Instead, though, some of these property owners are occupying that public land that, if restored to public use, would create a wider lagoon buffer and a public access trail that does not adversely affect the ESHA.

b. Middle Section of the West Bank- Public Access Trail (Exhibit #2, p.3)

The middle section of the west bank is the section located north of Topsail Street and south of Jib Street, where the City owns all of the west bank lots (Lots G through P) situated between the lagoon and Pacific Avenue (Exhibit #2, p.3). No residences or other private development exist in this section of the west bank. Also, there is no Esplanade West right-of-way in the middle section. Between Topsail and Jib Streets, there exists an informal pathway that meanders along the higher elevations of the west bank near the eastern curblin of Pacific Avenue. This public open space area is a very popular dog walking area, as evidenced by the prodigious amounts of feces.

The applicant's proposed new five-foot wide decomposed granite public access trail would mimic the existing informal trail by meandering along the higher elevations of the west bank, and staying close to Pacific Avenue where the bank narrows in width (Exhibit #4, ps.3-6). The applicant proposes to install a 36-inch high split rail fence (with green vinyl-coated chain-link fence) along the east (lagoon) side of the meandering trail to protect the lagoon habitat area from intrusion by people and domestic animals (Exhibit #3, p.2). The proposed new trail and fence through the middle section of the west bank would be located entirely on City land. No fill will be placed below the high water line in order to create the proposed trail. The existing Lighthouse Street pedestrian bridge, the only bridge over the lagoon and an important coastal access route, will not be affected by the proposed project. The applicant proposes also to remove the non-native plants that exist in middle section of the west bank, and vegetate the area with native plants (the area not covered by the new proposed public access trail).

In the middle section, as in the northern section of the west bank, the public's use of the trail near the ESHA and the resulting disturbance of the wildlife in the ESHA is a significant impact that must be avoided when designing the new public access trail. Therefore, staff is recommending that the new trail not be located closer to the waters of the lagoon than a line measured ten feet from the existing eastern curb of Pacific Avenue in order to maximize the width of the protective lagoon buffer between the new public trail and the waters of the lagoon. The width of the buffer should be widened beyond what the City is proposing in order to reduce the occurrences where trail users disturb the wildlife that depends on the habitat at the northern end of the lagoon for foraging and resting. Only as conditioned to align the trail along the inland part of the protective lagoon buffer is the proposed development consistent with Section 30240(b) and the marine resource policies of the Coastal Act.

c. Southern Section of the West Bank - Public Access (Exhibit #2, p.2)

The southern section of the west bank is the section located south of Topsail Street where 25 privately owned residential lots occupy most of the land, on Blocks 1 through 5 of the Del Rey Beach Tract (Exhibit #4, ps.7-8). This section of the west bank is where the twenty habitat and/or access easements exist on the developed residential properties (Exhibit #2, p.2). It is also the section where most of the encroachments exist within the protective lagoon buffer, which the City is proposing to remove. Existing public access through this section of the west bank, between Topsail Street and Via Marina, is provided by the public sidewalk on the west side of Pacific Avenue.

No trail is proposed along the southern section of the west bank, south of Topsail Street, as the City deleted this previously proposed segment in 2001 because it would require some filling of intertidal areas and would adversely affect the ESHA on the lagoon's west bank. The southern section of the west bank protective lagoon buffer provides superior habitat for wildlife (primarily birds) because of its relative isolation from human activities. An informal public access trail does not exist in this section of the west bank; so fewer people use the buffer for recreation and dog walking. Fewer people and dogs in the protective lagoon buffer strip results in enhanced habitat values and increased usage by various species of birds and other animals. The construction of a new trail through this section of the protective lagoon buffer strip would adversely affect the ESHA and would not conform with the requirements of Section 30240(b) of the Coastal Act.

In lieu of providing a new public trail along the southern section of the west bank, the applicant is proposing to develop four new public overlooks at the four street ends situated east of Pacific Avenue (Union Jack, Voyage, Westwind and Yawl Streets). Each street end would have a bench, trash receptacle and interpretive sign where it abuts the Esplanade West right-of-way (Exhibit #5). All four proposed overlooks are fenced and set back from the waters of the lagoon on the public land situated landward of the Esplanade West right-of-way. The limited type of recreational activities that would occur at these four proposed overlooks would not result in impacts that would significantly degrade the ESHA, and would be compatible with the continuance of the habitat areas on the west bank. Therefore, proposed overlooks on the four street ends are consistent with the requirements of Section 30240(b) of the Coastal Act and the marine resource policies of the Coastal Act.

2. Lagoon Buffer Vegetation/Removal of Encroachments

With no new trail being built, the southern section of the west bank would be restored as habitat with native plants, subsequent to the removal of the encroachments and non-native plants from the protective lagoon buffer strip. The middle and northern sections of the west bank would also be restored as habitat with native plants along with the required removal of private encroachments and the installation of the new public access trail from Topsail Street to Canal Court.

In the southern section of the west bank, the applicant proposes to install a new fence along the inland edge of each habitat easement, or along the inland edge of the Esplanade West right-of-way where no easement exists inland of the right-of-way (Exhibit #5). In the middle and northern sections of the west bank, the applicant proposes to install a new fence along the lagoon-side of the new public access trail. The fences would protect the protective lagoon buffer strip from adverse impacts that would significantly degrade the ESHA. The removal of the private encroachments and non-native plants and the restoration of the protective lagoon buffer is consistent with Section 30240(b) of the Coastal Act and the marine resource policies of the Coastal Act only if done in a manner that protects marine resources and the ESHA.

The protective lagoon buffer strip protects biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. In this case, encroachments and unpermitted development (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping) have been installed directly adjacent to the lagoon within the public rights-of-way, easements, and buffer areas that were required as a condition of the Commission's approval of several of the adjacent residences. This project would include the removal of the encroachments and unpermitted development and revegetation with native vegetation in order to restore the habitat within the protective lagoon buffer strip between the lagoon and the residences on the west bank. In order to ensure that the applicant's proposal to remove the encroachments and revegetate and restore the buffer strip is adequately implemented, Special Condition Two requires the applicant to submit a revised revegetation plan and to remove all encroachments and commence revegetation within 180 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

Biological productivity and habitat values on the west bank will be increased by the proposed removal of all invasive and non-native vegetation and the landscaping of the bank with native dune vegetation. The native vegetation provides valuable habitat for native insects on which the native birds and other animals are dependent for food. Non-native vegetation, such as iceplant, has displaced most of the native plants and provides very little biological value for native animals. Therefore, only native dune plants may be used for revegetation.

It is important that the City meticulously weed out the non-native plants in order to preserve the native plants that are already growing along the lagoon banks. This means using hand tools for vegetation removal rather than heavy equipment, grading and herbicides. Preservation of the existing native plants will allow the native vegetation on the west to re-establish itself more quickly and more successfully than it would using all imported plants from another location. Preservation of the existing native plants will also reduce the amount of new plants that the City must obtain for the revegetation of the protective lagoon buffer strip.

Therefore, in order to protect the existing native plants and reduce erosion, Special Condition Three prohibits the use of heavy machinery on the lagoon banks (no grading bulldozers) and herbicides. Small Bobcats with rubber wheels hand held mechanized equipment may be used for lifting the heavy loads of iceplant and other materials. Special Condition Three also requires the use of erosion controls, such as jute matting and silt curtains, in order to protect the waters of the lagoon from siltation caused by erosion of the lagoon banks. Only as conditioned, is the proposed project consistent with the marine resource policies of the Coastal Act.

Pursuant to Section 30240(b) of the Coastal Act, development adjacent to ESHAs must be compatible with the habitat and must be designed to prevent impacts that would significantly degrade the ESHA. In this case, the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act because it involves the restoration of habitat within and adjacent to the ESHA without any significant disruption of the ESHA. As conditions, all of the proposed rehabilitation work is required to be completed while minimizing the temporary impacts to the existing habitat areas and ensuring that the least tern foraging area is protected during the nesting season. Therefore, the proposed project, as conditioned by the conditions of the permit, is compatible with the habitat and has been designed to prevent impacts that would degrade the ESHA.

3. West Bank Public Overlook at Jib Street

At Jib Street near the northern end of the lagoon, the City proposes to construct a public education/information wildlife observation area on an existing elevated area on the west bank of the lagoon, with pedestrian access provided by the proposed new west bank public access trail (Exhibit #4, p.3). The public education/information wildlife observation area, which would have public benches and small information kiosks, provides one area along the northern section of the west bank where people would be encouraged to get close to the water to observe the wildlife of Ballona Lagoon. The proposed education/information wildlife observation area is a type of use that is dependent on the ESHA and it would not result in any significant disruption of habitat values. Therefore, the proposed overlook it is consistent with the ESHA protection requirements Section 30240 of the Coastal Act.

On Pacific Avenue near the proposed public education/information area, the City proposes to close an unimproved public parking area (four spaces) situated in the Jib Street right-of-way by constructing a new curb and gutter on the east shoulder of Pacific Avenue (Exhibit #4, p.3). The parking area would be vegetated with native plants. The removal of this parking area and elimination of cars from the restored west bank would not adversely affect the ESHA and is consistent with the requirements of Section 30240(b) of the Coastal Act.

4. Drainage Improvements

In order to reduce the negative effects of urban runoff, the proposed project includes the repairs to the gutter and curb on the eastern side of Pacific Avenue at Jib Street and Topsail Street (Exhibit #4, ps.3&7). Although the City recently installed new drains with filters at these two locations pursuant to Coastal Development Permit 5-00-161, the curbs and gutters have not been fixed. As a result, uncontrolled sheet flow from the street has eroded gullies in the lagoon bank at these two locations. To correct this, the proposed project includes the installation of curbs on the east side of Pacific Avenue at Jib Street and Topsail Street to

prevent uncontrolled sheet flow from leaving the street. Appropriate drainage connections will be installed to control runoff from Pacific Avenue using the existing drains approved by Coastal Development Permit 5-00-161. In addition, street drain filters shall be installed in all drains that discharge directly into Ballona Lagoon if they do not already have such filters. It is vital that these filters be changed periodically to prevent the drains from clogging, backing up, and causing Pacific Avenue to flood. The permit is conditioned to require the City to maintain these drains. No new drain outlets are being proposed (or permitted) as part of the project.

The eroded gullies on the west bank at Jib Street and Topsail Street will be filled and landscaped with native plants. No fill, however, is permitted below the five-foot contour in order to protect the wetland vegetation that exists at the high water elevation (+3.0' MHTL). If not stabilized, the bank would continue to erode and cause siltation in the lagoon. As conditioned to correct the drainage problems that have caused the west bank to erode, the proposed project is consistent with the requirements of Section 30240(b) and the marine resource policies of the Coastal Act

5. Minimizing Adverse Impacts to Marine Resources

Special Condition Six requires the permittee to comply with all requirements and mitigation measures imposed and requested by the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

In order to minimize adverse impacts on least tern foraging areas during the least tern nesting season, no mechanized equipment or other types of loud and disturbing equipment shall be used within fifty feet of the water during the period commencing March 15 and ending September 1. The limit on mechanized equipment will reduce the noise that disturbs the wildlife. Revegetation of the lagoon bank by hand may occur during the least tern nesting season because the presence of a limited number of people on the lagoon banks is not expected to have an adverse effect on least tern foraging. People have historically used the public access trails while least terns forage in the lagoon.

As conditioned, the proposed project protects the least tern foraging area, existing wetland vegetation, and the biota in the channel. The non-native plants will be removed, and native vegetation will be preserved and planted along the entire west bank lagoon buffer (including on the habitat easements on the private lots located between Topsail Street and Via Marina), thus improving and enlarging the upland habitat area. All landscaping will be monitored for five years to ensure its success. The proposed project, as conditioned, is designed to prevent significant impacts to the ESHA and is compatible with the habitat. Therefore, the proposed project is consistent with Section 30240 of the Coastal Act.

Special Condition Four requires the permittee to prepare a construction staging plan for approval by the Executive Director, prior to issuance of the permit. The required construction staging plan is necessary to prevent the unpermitted deposition, spill or discharge of any liquid or solid into coastal waters (which include Ballona Lagoon and the Venice Canals). Sections

30230 and 30231 of the Coastal Act require the protection of biological productivity for, among other reasons, public recreation purposes and marine resources, and that marine resources be maintained and restored. In addition, Section 30231 requires that the adverse impacts of runoff and wastewater discharges must be minimized.

The staging plan shall identify the specific locations of all construction staging activities and equipment and materials storage areas and specify that none of them shall be located on any beach, wetland or environmentally sensitive habitat area. Also, in order to restore and enhance the biological productivity and the quality of the lagoon waters, the applicant is required to coordinate with the County of Los Angeles Department of Beaches and Harbors to improve the operation of the Ballona Lagoon tidal gates located at the southern end of the lagoon beneath Via Marina in order to enhance tidal exchanges. As conditioned, the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

Finally, the proposed restoration project, as conditioned, is consistent with Section 30240 and is also the least environmentally damaging alternative because:

- The proposed project includes virtually the restoration of the entire west bank protective lagoon buffer strip, including all of the City-owned properties on the west bank and the habitat easements that comprise part of the protective lagoon buffer strip. The City's agreement to accept the easements that comprise part of the protective lagoon buffer strip ensures that the restoration of the west bank will be completed as one comprehensive project, rather than piece-by-piece or not at all.
- No work or development will occur in the wetland. All proposed revegetation and public access improvements are located above the high water level and the narrow band of wetland vegetation that exists near the high water line (+2.65 MHTL). No fill is permitted below the five-foot contour line.
- The large areas dominated by non-native vegetation like South African iceplant will be revegetated with native coastal strand plants (Exhibit #3, p.1). Appropriate erosion control measures will be implemented to prevent siltation in the lagoon. The native vegetation shall be preserved and will continue to provide valuable habitat for native insects on which the native birds and other animals are dependent for food.
- The new proposed trail shall be aligned within the Esplanade West right-of-way and away from the water and ESHA at the northern end of the lagoon is consistent with Section 30240(b) of the Coastal Act. Section 30240(b) requires that development adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.
- The proposed project will improve the existing Ballona Lagoon/Grand Canal public trail system while reducing the negative impacts of human activity on the wetland. A 36-inch high split rail fence (with wire fabric) will be installed along the waterside of the entire public trail system that is lagoon-ward of the west bank residences to reduce the problem of intrusion by people and domestic animals (Exhibit #3, p.2). The sensitive habitat areas near the water on the west bank will be protected by such

fencing and no new public access trails will be placed in sensitive habitat areas near the water's edge. A previously proposed segment of new trail along the water's edge at the south end of the west bank has been deleted from the plan.

All adverse environmental effects of the proposed project have been minimized by the special conditions of approval. The proposed revegetation of the entire west bank buffer with native plants will adequately mitigate the temporary impacts of the proposed project on the existing habitat. Therefore, the proposed project, as conditioned, is consistent with the ESHA and marine resource policies of the Coastal Act.

E. Public Access and Recreation

One of the basic goals stated in the Coastal Act and the certified Venice Land Use Plan (LUP) is to maximize public access to and along the coast. The improvement of the existing Ballona Lagoon public trail system is one of the goals of the proposed project. The Coastal Act has several policies that protect public access along the shoreline and public recreational opportunities.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30214 of the Coastal Act states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- 1) Topographic and geologic site characteristics.
- 2) The capacity of the site to sustain use and at what level of intensity.

3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The certified Venice LUP sets forth the following policy addressing public access around Ballona Lagoon:

LUP Policy II. C. 3. Ballona Lagoon Enhancement Plan (Pedestrian Access).
Pedestrian access and interpretative overlooks to the Ballona Lagoon shall be enhanced without invading the privacy of adjoining residents. The existing public walkway on the east bank of Ballona Lagoon, and the overlook on the southern end of the lagoon near Via Marina, shall be maintained and protected for public access. (Refer also to Policy IV.B.1).

LUP Policy IV. B. 1. Ballona Lagoon.

a. Ballona Lagoon Enhancement Plan. *The Ballona Lagoon shall be restored, protected and maintained for shallow tidal and intertidal marine habitat, fisheries and public access as provided in the Ballona Lagoon Enhancement Plan (See Coastal Commission Coastal Development Permit 5-95-152 and amendments). The plan is intended to improve water quality and tidal flushing; reduce the amount of garbage, sediment and other pollutants in the lagoon; maintain and expand habitat values for*

the endangered least tern, shorebirds and fisheries; restore native vegetation; protect banks from erosion; maintain and if possible increase the existing 50-year flood protection; and enhance public trails and interpretative overlooks without invading the privacy of adjoining residents. The goals and policies of the Enhancement Plan shall be carried out in a manner consistent with the policies of this LUP. The Ballona Lagoon tidal gates located beneath Via Marina shall be operated in a manner that sustains and enhances biological productivity in the lagoon by ensuring maximum water circulation.

b. Permitted Uses. *Only uses compatible with preservation of this habitat shall be permitted in and adjacent to the lagoon. Uses permitted in or adjacent to the lagoon shall be carried out in a manner to protect the biological productivity of marine resources and maintain healthy populations of marine organisms. Such uses as open space, habitat management, controlled nature study and interpretation, and passive public recreation such as birdwatching, photography, and strolling shall be encouraged and promoted. No fill shall occur in Ballona Lagoon unless it is consistent with Coastal Act Section 30233 and is the least environmentally damaging alternative. No untreated runoff shall be directed into the lagoon.*

An unimproved trail already exists along the west bank of Ballona Lagoon, running between Canal Court and Topsail Street. The City proposes to realign the existing trail and improve it as a five-foot wide decomposed granite public access path, except for the section of concrete walkway on the Esplanade West right-of-way that exists north of Jib Street (Exhibit #4, p.2). South of Jib Street, the proposed new public access trail would meander along the higher elevations of the west bank near the eastern curbline of Pacific Avenue (Exhibit #4).

The City proposes to install a 36-inch high split rail fence (with green vinyl-coated chain-link fence) along the entire east side of the trail to protect the lagoon habitat area from intrusion by people and domestic animals (Exhibit #3, p.2). The proposed new trail and fence would be located entirely on City land, connecting the existing improved Grand Canal public accessway to the Pacific Avenue public sidewalk at Topsail Street (Exhibit #4, p.1). No fill will be placed below the high water line in order to create the proposed trail. The existing Lighthouse Street pedestrian bridge, the only bridge over the lagoon and an important coastal access route, will not be affected by the proposed project.

At Jib Street near the northern end of the lagoon, the City proposes to construct a public education/information wildlife observation area on an existing filled area on the west bank of the lagoon, with pedestrian access provided by the proposed new west bank public access trail (Exhibit #4, p.3). The public education/information wildlife observation area, which would have public benches and small information kiosks, provides one area along the west bank where people would be encouraged to get close to the water to observe the wildlife of Ballona Lagoon. On Pacific Avenue near the proposed public education/information area, the City proposes to close an unimproved public parking area (four spaces) situated in the Jib Street right-of-way by constructing a new curb and gutter on the east shoulder of Pacific Avenue (Exhibit #4, p.3).

North of Jib Street, the proposed trail would run above the waterline along the edge of the existing private residential development, some of which encroaches onto and over the Esplanade West right-of-way (See Exhibit #4, p.2: "Encroaching Decks"). A condition of this

permit requires the applicant to align the new public access trail within the Esplanade West right-of-way. Section 30214 of the Coastal Act states that the access policies are to be implemented in a way that takes into account the need to regulate access and the site's ability to sustain any given level of intensity of use and the appropriateness of access due to the fragility of the natural resources and the proximity to residential uses. For this reason, the Commission is requiring the new trail to be aligned along the inland portion of the public land (within the Esplanade West right-of-way) away from the ESHA at the edge of the lagoon, but not directly adjacent to the property lines of the residential lots along the northern end of the west bank. The permit would permit the provision of a five-foot wide buffer on public land between the new trail and the property lines of the abutting residential lots, but provide a wider buffer between the waters of the lagoon and the trail in order to better protect the sensitive habitat along the edge of the lagoon.

The Esplanade West right-of-way is ten feet wide, and the proposed trail would be five feet wide. So there is room within the right-of-way to provide a five-foot wide buffer between the new trail and the property lines of the abutting residential lots. Therefore, subsequent to the removal of the encroachments from the Esplanade West right-of-way on the northern end of Ballona Lagoon, a five-foot wide buffer may be provided between the new trail and the adjacent homes where the public trail must pass between the waters of the lagoon and existing private residences. The five-foot wide buffer, along with a fence or privacy wall, would provide a measure of privacy between trail users and the residences. Only as conditioned is the new trail alignment is consistent with the public access policies of the Coastal Act.

As conditioned to require the trail to be improved within the Esplanade West right-of-way, the proposed improvement of the west bank trail between Canal Court and Topsail Street is also consistent with the public access and recreation policies of the Coastal Act because it would provide improved public access and viewing areas along the ESHA and would complete the public access system that would surround the entire lagoon and Grand Canal.

A previously proposed public access trail along the lagoon's edge through the southern section of the west bank was deleted from the project in 2001. Instead of building a new trail between the existing residences and the waters of the lagoon between Topsail Street and Via Marina (within the protective lagoon buffer strip), the City would continue to provide public access through this southern section of the west bank on the public sidewalk that exists along the west side of Pacific Avenue. This Pacific Avenue sidewalk would provide the pedestrian connection between the public recreation area at the southern end of Ballona Lagoon and the proposed new west bank trail which terminates at Topsail Street (Exhibit #4, p.7). A new stop sign and pedestrian crossing would be installed at the intersection of Topsail Street and Pacific Avenue to enable pedestrians to safely cross the busy thoroughfare.

Also along the southern section of the west bank, In lieu of providing a new public trail on the lagoon bank, the applicant is proposing to develop four new public overlooks at the four street ends situated east of Pacific Avenue (Union Jack, Voyage, Westwind and Yawl Streets). Each street end is forty feet wide and about one hundred feet in length (segments between Pacific Avenue and the Esplanade West). Each proposed overlook would include a bench, trash receptacle, interpretive display and regulatory signs regarding trail use, habitat protection, domestic pets and littering (Exhibit #5). These four proposed overlooks would provide the public with low (free) cost recreational and educational facilities. Because these four street

ends are City rights-of-way under City ownership, where the public currently has unrestricted access, the public's use of the proposed overlooks would not adversely affect the adjacent residents' privacy.

As proposed, the only public parking that will exist within the project area at the conclusion of the proposed development is the existing informal parking area on the Yawl Street End, which is not being affected by the proposed project. The Yawl Street end is an unpaved and unsigned gravel lot where people, mostly nearby residents, have been parking for years. Union Jack and Voyage Streets are paved and used as private driveways to residences on the west bank (Exhibit #4, ps.7&8). The Westwind Street end is landscaped with large trees.

The permit is conditioned to require that the City maintain the Ballona Lagoon public trail system, keep the accessways open to the public, and to remove any future encroachments after completion of the restoration project. In order to protect the sensitive habitat area of the west bank of Ballona Lagoon from intrusion by people and domestic animals, the City proposes to erect a 36-inch high split rail fence (with wire fabric) along the waterside of the entire public trail system (Exhibit #3, p.2). The permit is conditioned to require the City to erect a similar fence on the inland side of the protective lagoon buffer easements that are proposed to be restored on the private lots south of Topsail Street. The purpose of the fence is to reduce conflicts between the two goals of the Coastal Act: protection of habitat and provision of public access. The fence will protect the habitat on the bank of the lagoon while still allowing the public to access the area to observe the habitat area without trampling it. The fences around the proposed overlooks would also discourage trespassing onto the adjacent private properties on the west bank. Therefore, the Commission finds that the proposed project, only as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

The proposed project, as conditioned, includes the improvements necessary to complete the entire pedestrian access system around Ballona Lagoon, significantly enhancing the existing public trail system and improving public recreation opportunities. After completion of the proposed project, the public will have gained improved access along the west bank of Ballona Lagoon, and have new public overlooks at the ends of Jib, Union Jack, Voyage, Westwind and Yawl Streets. The proposed public access improvements will encourage public access that is consistent with the historical character and use of the area, as well as the goals of the Coastal Act and certified Venice LUP. Walking, jogging, bird watching, photography, and other popular forms of recreation will be improved by the proposed project. Public parking is available within the Silver Strand residential area on the east bank of Ballona Lagoon, along Via Marina at the southern end of the lagoon, and in the residential neighborhoods north and west of the lagoon. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies contained in Chapter 3 of the Coastal Act.

F. Hazards

The Coastal Act states that new development must minimize risks to life and property in certain hazardous areas and not create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Developments located in or near the ocean have the potential for damage caused by wave energy, floods, seismic events, storms and erosion. No development near the water can be guaranteed to be safe from hazard. The proposed project is located adjacent to Ballona Lagoon, a coastal waterway. The area next to the water is susceptible to flooding due to its low elevation in relation to sea level. The City and county operate tidal gates to control the water level in the lagoon. In the past, periods of heavy precipitation occurring at the same time as high tidal levels have resulted in higher than normal tide levels. The sandy substrata beneath the site make the area susceptible to liquefaction during seismic events.

The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. The condition imposed on this permit ensures that the permittee understands and assumes the risks of potential hazards associated with development in or near the water. Prior to issuance of the coastal development permit, the applicant shall submit a copy of a written agreement by the applicant, in a form and content acceptable to the Executive Director, accepting all of the above terms. As conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

G. Responses to Public Comments

In the days prior to the Commission's previous January 8, 2002 public hearing on the permit applications, staff received several letters from local residents and other interested parties commenting on the proposed project (Exhibit #8). The following findings are in response to the privacy and security concerns raised by those letters. The habitat, parking and trail alignment issues raised in the letters are addressed in Sections D and E of this staff report.

Privacy and Security

The proposed project raises no legitimate privacy impacts as all of the public access components of the proposed project (i.e. trail and overlooks) are located entirely on public property, and the public already has uncontrolled access to the lagoon buffer areas that exist between the waters of the lagoon and the west bank residential properties. The residences along the west bank of Ballona Lagoon are now surrounded by public lands, like most homes in the Venice and Marina del Rey area, and the project will not change that. The proposed overlooks and public trail would be situated entirely on City property and right-of-way (Esplanade West), and they each include fencing that would improve security next to the homes over what exists now. No private property would be opened for public access.

As conditioned, the proposed project will formalize the publicly accessible areas in the protective lagoon buffer with fencing in order to protect the habitat areas next to the lagoon. The required fencing will also increase the security and privacy on the adjacent private

properties by clearly defining the extent of the public access areas. In addition, a privacy wall is being permitted within a five-foot wide buffer situated on public land (Esplanade West right-of-way) between the new public access trail and the adjacent private property along the northern section of the west bank, where the public trail will be aligned within the Esplanade West right-of-way in front of the private residences. The five-foot buffer of public land, along with yard areas and setbacks already provided on each private lot, would increase the distance between the legally publicly accessible areas and private property over what currently exists. Therefore, the proposed project would not result in any new threats to safety or security.

The Crime Prevention Unit of the Los Angeles Police Department has reviewed the proposed project and states that it would not result in an increase in crime and made the following suggestions: a) use thorny landscape as a natural barrier to deter unwanted entry, b) use landscaping and fencing that does not create hiding places, and c) provide night lighting, if feasible (Exhibit #7, p.3). First, the residents may secure their homes by any appropriate means, including the use of non-invasive thorny plants and nighttime lighting on their property. Secondly, the dune plants being used to restore the west bank grow low and near the ground, and therefore do not grow big enough for a person to hide behind. This type of dune vegetation is the native vegetation that has always grown along the lagoon banks, and would continue to do so even without the proposed restoration. In regards to the new fencing, the proposed fencing is 36-inch high split rail and chain link, which is not solid enough to provide a hiding place. Lastly, the proposed project does not include any new lighting, so there will be no change in that regard.

The only real change will occur where some residents have been illegally using public property for private purposes (See Exhibit #4, p.2: "Encroaching Decks"). The proposed removal of the private encroachments from public lands is the issue that is generating the most controversy. Once these encroachments are removed from public property, and the lands restored as habitat or for public access, the public land will provide a public, rather than private, benefit.

Fire Hazard

The Los Angeles Fire Department has reviewed the revegetation plan and states that it would not create a fire hazard (Exhibit #7, p.2). Dune vegetation grows low and near the ground, and therefore does not grow as dense brush and does not constitute a fire hazard. Again, this type of dune vegetation has always grown along the lagoon banks, and would continue to do so even without the proposed restoration. Similarly, the new public access trail, and all other aspects of the project, do not provide sufficient fuel for wildfires.

H. Unpermitted Development

Development has occurred on site without the required coastal development permits and in non-compliance with the terms and conditions of previously issued coastal permits including, but not limited to, fences, walls, lighting, irrigation improvements, decks, patios and residential landscaping situated within the protective lagoon buffer strip and habitat and public access easements. This project would include the removal of all unpermitted development within the City's rights-of-way and city-held easements on private property and revegetation with native vegetation.

To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition Twelve requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 180 days of Commission action. In addition, in order to ensure implementation of the applicant's proposal to remove the unpermitted development located within the City's rights-of-ways, City owned property and easements, Special Conditions Two requires the applicant to submit a revised revegetation plan, remove all encroachments and begin revegetation within 180 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

In addition, some unpermitted development has occurred in areas landward of the City's easements and rights-of-way and would, therefore, not be included as part of the proposed project. In order to allow for potential resolution of some or all of those violations as part of this permit, Special Condition Nine authorizes removal by the City of any unpermitted fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping within any required "habitat buffer" area (including areas where a recorded easement was not required) on private property that was imposed by condition of approval of a coastal development permit subject to the permission of the property owner.

Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

I. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

- (a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

In addition to the certified LUP policies listed in the prior sections of this staff report, the certified Venice LUP contains the following relevant policies:

LUP Policy II. C. 3. Ballona Lagoon Enhancement Plan (Pedestrian Access).
Pedestrian access and interpretative overlooks to the Ballona Lagoon shall be

enhanced without invading the privacy of adjoining residents. The existing public walkway on the east bank of Ballona Lagoon, and the overlook on the southern end of the lagoon near Via Marina, shall be maintained and protected for public access. (Refer also to Policy IV.B.1).

Policy IV. B. 6. Domestic Animals. *A program should be developed to protect the wetland area of Ballona Lagoon and the Grand Canal south of Washington Boulevard from intrusion by domestic animals and pets, particularly cats and dogs.*

Policy IV. E. 1. *The banks, waterways and public walkways of the Venice Canals, Ballona Lagoon and Grand Canal south of Washington Boulevard shall be periodically maintained by the City or other appropriate entity, to keep these areas free of accumulated trash and wastes, thereby maintaining the biological, water quality, recreational and aesthetic resources of these areas.*

Policy V. A. 3. Infrastructure. *New sewer, storm drain, and water lines shall be installed using the least environmentally disturbing method feasible. The City of Los Angeles Department of Public Works shall develop a comprehensive citywide Storm Water Management Program, as discussed further in Implementation Strategy of Policy IV.C.1 of this LUP, to control stormwater run-off from new public and private developments and, where feasible, to remove pollutants from that run-off. Development of infrastructure shall precede or be constructed concurrently with the construction of developments or in lieu-fee should be paid.*

Policy IV. C. 2. Water Quality. *The methods to improve water quality, recommended in California's Plan for the Control of Non-Point Source Pollution (January 2000), such as watershed planning and management programs, and habitat restoration projects, shall be considered and implemented by the City of Los Angeles where feasible opportunities exist. Selected Best Management Practices (BMPs) or suites of BMPs shall be designed to treat, infiltrate or filter the stormwater runoff from each runoff event up to and including the 85th percentile, 24-hour runoff event for volume based BMPs and/or the 85th percentile, 1 hour event, with an appropriate safety factor, for flow-based BMPs.*

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. As discussed above, as conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

J. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives

or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized by the recommended conditions of approval and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. The no project alternative and an alternative design for the proposed restoration project were considered. The no project alternative was rejected because of the current need for restoration of the west bank area of Ballona Lagoon to remove the non-native plants and to improve the public accessway. The alternative design reviewed as part of Local Coastal Development Permit No. 00-04 has been rejected because it is not the least environmentally damaging alternative. The currently proposed project, as conditioned, is the least environmentally damaging alternative. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.